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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SWATCH AG (SWATCH SA) (SWATCH LTD.),

Plaintiff,

v.

TARGET CORP., and TARGET BRANDS, INC.,

Defendants.

Civil Action No.: 14 CV 1580

Judge:

JUDGE FAILLA

COMPLAINT

The Plaintiff, Swatch AG (Swatch SA) (Swatch Ltd.) (hereafter "Swatch" or "Plaintiff") brings this action to obtain redress and compensation for past and ongoing loss and damage sustained as a result of trade dress infringement, unfair competition, false advertising, and false designation of origin by Defendants Target Corp., and Target Brands, Inc. (hereafter "Target" or "Defendants").

As and for its Complaint against Defendants, Plaintiff hereby states and alleges the following:

PARTIES

1. Plaintiff is a corporation duly organized and existing under the laws of Switzerland, located at 94 Rue Jakob Stampfli, CH-25009 Bienne, Switzerland. Plaintiff is a manufacturer and seller of, among other things, watches, watch parts, and jewelry under a multitude of valid, subsisting, incontestable, and famous registered and common law trademarks for the SWATCH mark as well as valid, subsisting, and common law trademarks for the

distinctive trade dress of its SWATCH branded watches (hereafter the "Zebra Watch Trade Dress" or the "Multi-Color Watch Trade Dress" individually or "Trade Dress" collectively).

2. Upon information and belief, Target Corp. is a Minnesota corporation with its principal place of business at 1000 Nicollet Mall, Minneapolis, MN 55403.

3. Upon information and belief, Target Brands, Inc. is a Minnesota corporation with its principal place of business at 1000 Nicollet Mall, Minneapolis, MN 55403.

JURISDICTION AND VENUE

4. On information and belief, Defendants have committed and are committing acts of Trade Dress Infringement and Unfair Competition under the Lanham Act as hereinafter alleged in this District, through displaying, selling, importing, distributing, advertising, tarnishing, and using the Trade Dress without authorization of Plaintiff. Defendants participate in these unlawful acts either directly, or contribute to these unlawful acts.

5. This action is for Trade Dress Infringement, Unfair Competition, False Advertising and False Designation of Origin arising under the Lanham Act §43(a), 15 U.S.C. §1125; and Trade Dress Infringement and Unfair Competition arising under New York common law.

6. This Court has original jurisdiction pursuant to 28 U.S.C. §§1331 and 1338 as it involves claims presenting federal questions under 15 U.S.C. §1125 (actions arising under the Lanham Act have original jurisdiction in federal courts), 15 U.S.C. §1114.

7. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367 since such state law claims arise out of the same case and controversy as the claims in this action, over which the Court exercises original jurisdiction.

8. This Court has personal jurisdiction over Defendants in that Defendants transact business in the State of New York and in this Judicial District, and have offered for sale the infringing products in this District.

9. Upon information and belief, Target Corp. has a corporate office in New York State and also operates retail stores in New York State and in this District, from which residents of New York can purchase goods and services.

10. Venue is proper in this District pursuant to 28 U.S.C. §1391 (b) and (c) because, upon information and belief, a substantial part of the events or acts giving rise to the claim occurred in this District, Defendants are subject to the court's personal jurisdiction with respect to such action, Defendants conduct business in this District. Venue is also proper in this District under 28 U.S.C. § 1391(d).

FACTS

11. As shown below, Defendants have sold watches that copy Plaintiff's watches:

Plaintiff's Zebra Watch

Defendants' Watch

Plaintiff's Multi-Color Watch

Defendants' Watch

12. In the early 1980's, Plaintiff revolutionized the watch industry by creating plastic-cased SWATCH® brand watches consisting of only 51 components. These watches offer high quality at an affordable price and have become one of the most successful watches of all time.

13. Plaintiff has created many innovative and distinctive SWATCH® brand watch designs. Plaintiff has combined high quality fashion at an affordable price with its SWATCH® watches.

14. The first SWATCH® brand watch went on sale in the United States in 1982. Since its 1982 debut, the SWATCH® brand watch has become one of the most successful wristwatches of all time. Plaintiff has sold hundreds of millions of SWATCH® brand watches worldwide.

15. Watches bearing the SWATCH® trademarks have been advertised, promoted and otherwise used in commerce throughout the United States, including this District, since at least as early as 1982.

16. In addition to watches, Plaintiff also sells jewelry, including necklaces, earrings and bracelets bearing the SWATCH® brand.

17. Plaintiff has sold millions of SWATCH® brand products.

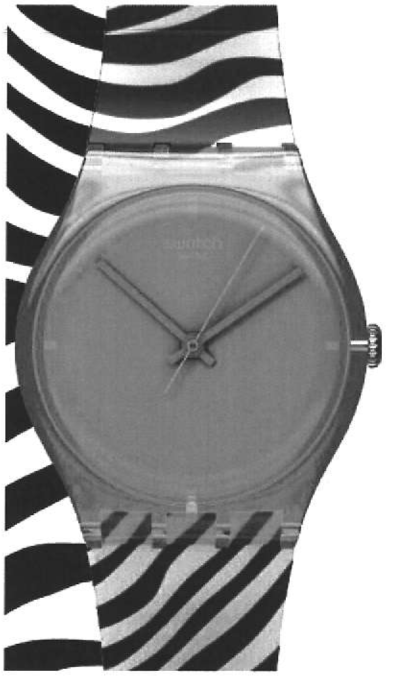
18. SWATCH® brand watches have appeared in countless publications, television advertisements, promotions, and on the internet.

19. Plaintiff has been an Official Timekeeper and Official Sponsor of the Olympic Games and the SWATCH® brand has been affiliated with numerous celebrities.

20. The SWATCH® trademarks and trade dress have acquired distinctiveness and secondary meaning signifying Plaintiff and its products.

21. Plaintiff's Zebra Watch Trade Dress creates a distinct overall look and commercial impression.

22. Pictures showing Plaintiff's Zebra Watch Trade Dress are below:



23. Elements of the Zebra Watch Trade Dress include:

a. A round and brightly colored face that matches the color of the watch casing.

b. A watch face color to contrast with the watch band.

c. Bright watch colors including neon blue, green, yellow, orange, pink and purple.

d. A watch face, which does not contain numerals.

e. Hour, minute, and second hands of the watch, which appear the same color as the face of the watch (blue, green, yellow, orange, pink, or purple).

f. A faceted silver metal winding crown with the metal watch stem visible through the translucent plastic casing around the face of the watch.

g. A watch buckle, located at the top of the watch, which is made of translucent plastic and is the same color as the watch face (blue, green, yellow, orange, pink or purple).

h. A distinctive Zebra Watch pattern of lines drawn closely together.

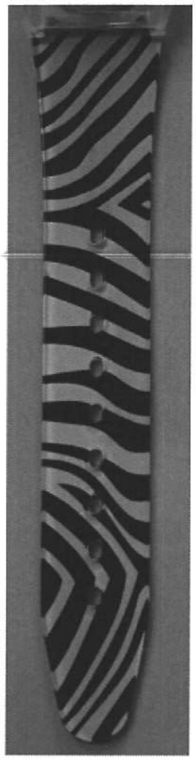
i. The distinctive Zebra Watch pattern includes wavy diagonal and horizontal black lines of differing thicknesses on a white background.

j. The distinctive Zebra Watch pattern also includes a layered, sideways "V" design, which is duplicated twice on the bottom watch strap. On the bottom of the watch strap, the first sideways "V" points to the left and the second points to the right. The sideways "V" on the top watch band points to the right.

k. In viewing the Zebra Watch pattern from the top of the watch to the bottom of the watch, the top of the watch contains seven (7) diagonal black lines of varying thickness set on a white background. Directly under the seven (7) black lines is a sideways "V" that is made up of three (3) black lines and points to the left. Under the sideways "V" there are three (3) diagonal black lines and two (2) wavy black lines before the watch band joins the top of the watch crown. The lower watch strap contains seven (7) diagonal black lines and then a sideways "V" that points to the left and consists of two (2) black lines. After the second sideways "V" there are two (2) horizontal black lines and four (4) wavy lines. Below these lines are one (1) diagonal black line and then the third sideways "V." This sideways "V" points to the left and consists of four (4) black lines of varying thickness. Below the last sideways "V" are three (3) remaining black diagonal lines.

24. The Zebra Watch Trade Dress is not functional.

25. Photos of a watch sold by Defendants that infringes the Zebra Watch Trade Dress are included below:



26. A picture showing Swatch's Multi-Color Watch Trade Dress is below:

27. The Multi-Color Watch Trade Dress creates a distinct overall look and commercial impression. Elements of the Multi-Color Watch Trade Dress include:

a. A watch band that is made to wrap around the wearer's wrist twice to create a double strap look.

b. A round, colored face that matches the color of the watch casing and the watch band.

c. Watch colors including pink, blue, red, orange, green, purple, yellow, teal, tan, light orange, light pink, lime green, light blue, army green, lilac, and sea foam green.

d. A face which contains white numbers one (1) through twelve (12).

e. Small white circles that mark each minute between the numerals on the watch.

f. White hour, minute, and second hands.

g. A round faceted silver metal winding crown.

h. Plaintiff's signature three-prong connector for the watch strap.

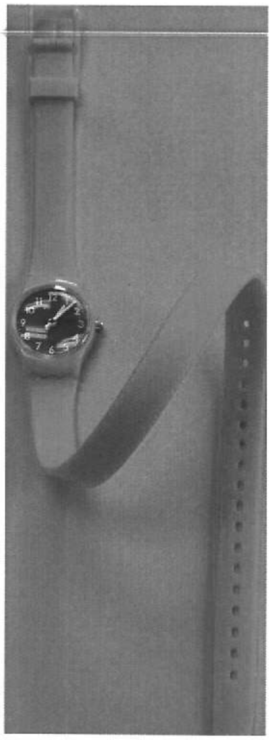
i. A watch buckle that is made of plastic and is the same color as the watch face and the watch strap.

j. A watch strap holder that is plastic and is the same color as the watch face and the watch strap.

k. A watch band that consists of a long strap, which is made of a flexible silicone (or silicone-like) material.

28. Plaintiff's Multi-Color Watch Trade Dress is not functional.

29. Photos of a watch sold by Defendants that infringes the Multi-Color Watch Trade Dress are included below:



30. Plaintiff and its watches bearing the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress have become widely known as the source of exclusive, fashionable, high quality precision watches.

31. In addition to Federal trademark registration for its SWATCH® trademarks, Plaintiff owns common law rights in the Trade Dress for the distinctive products sold under the Zebra Watch Trade Dress and Multi-Color Watch Trade Dress.

32. Plaintiff and its watches bearing the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress have become widely known as the source of exclusive, fashionable, high quality precision watches.

33. Defendants copied protected elements of Plaintiff's Zebra Watch Trade Dress and Multi-Color Watch Trade Dress.

34. The Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress have acquired distinctiveness and secondary meaning signifying Plaintiff and Plaintiff's products. The public and trade have come to rely on Plaintiff's Zebra Watch Trade Dress and Multi-Color Watch Trade Dress to distinguish its products and services from those of others in the marketplace.

35. Plaintiff provided notice to Defendants that their use of the Zebra Watch Trade Dress and Multi-Color Watch Trade Dress infringes Plaintiff's exclusive rights; however, upon information and belief, Defendants continue to sell infringing watches bearing Plaintiff's Trade Dress.

36. Upon information and belief, at all relevant times hereto, Defendants have had full knowledge of Plaintiff's ownership of and exclusive right to use the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress.

37. Plaintiff has invested substantially in the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress in order to maintain their distinctive image in the marketplace.

38. Defendants, without the authorization of Plaintiff, are advertising, selling, distributing, and offering for sale infringing watches bearing the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress.

39. Defendants previously and/or currently advertise, sell, distribute, and offer for sale watches that infringe Plaintiff's distinctive Zebra Watch Trade Dress and Multi-Color Watch Trade Dress.

40. The watches sold by Defendants are of a quality substantially different than, and inferior to, that of Plaintiff's genuine goods.

41. Plaintiff suffers irreparable injury and damage as a result of Defendants' unlawful use of the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress.

COUNT I
TRADE DRESS INFRINGEMENT

42. Plaintiff restates and re-avers each and every allegation contained in the foregoing paragraphs and the acts of Defendants asserted therein as if fully recited in this paragraph.

43. This count arises under 15 U.S.C. §1125(a).

44. This claim is for trade dress infringement against Defendants for their advertising, distribution, sale, importation and offering for sale infringing watches bearing the SWATCH Trade Dress.

45. Plaintiff's Zebra Watch Trade Dress and Multi-Color Watch Trade Dress are non-functional because the elements of the Trade Dress are not essential to the use, purpose, cost or quality of the watches and Plaintiff's exclusive use of the Trade Dress would not put competitors at a significant non-reputation-related disadvantage.

46. Plaintiff's Zebra Watch Trade Dress and Multi-Color Watch Trade Dress have acquired secondary meaning with the public and the Trade Dress identifies Plaintiff as the source of the products in the marketplace.

47. Without Plaintiff's authorization, and with full knowledge of Plaintiff's exclusive rights in the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress, Defendant have advertised, distributed, sold, imported and offered for sale infringing watches bearing the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress.

48. Defendants' use of the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress on infringing watches is likely to cause confusion, mistake and deception among the general purchasing public as to the origin of the infringing watches, and is likely to deceive the public into believing the infringing watches being sold by Defendants originate from, are associated with or are authorized by Plaintiff.

49. Defendants' actions constitute infringement of the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress in violation of Plaintiff's rights under § 32 of the Lanham Act, 15 U.S.C. § 1125(a).

50. Defendants' actions demonstrate an intentional and willful intent to trade on the goodwill associated with the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress.

51. Defendants' acts of trade dress infringement, as alleged above, are causing Plaintiff and the public irreparable injury, and will continue to do so unless restrained and enjoined.

52. On information and belief, Defendants have no present intention of terminating the activities complained of but, on the contrary, are continually seeking to expand such activities.

53. Defendants' trade dress infringement have caused Plaintiff to sustain monetary damage, loss and injury, in an amount to be determined at the time of trial.

COUNT II
FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING AND UNFAIR COMPETITION

54. Plaintiff restates and re-avers each and every allegation contained in the foregoing paragraphs and the acts of Defendants asserted therein as if fully recited in this paragraph.

55. This count arises under 15 U.S.C. §1125(a).

56. Defendants have willfully and intentionally used the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress in a manner which is likely to cause confusion, mistake or deception, by virtue of its prominent use thereof in connection with Defendants' infringing watches.

57. Defendants' use and/or association with the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress represents a False Designation of Origin, as consumers are likely to associate the Defendants' infringing watches with Plaintiff and Plaintiff's well known and highly regarded use of the Trade Dress as an indicator of source, quality and consistency.

58. Consumers will believe that Defendants' infringing watches are associated with, sponsored and/or endorsed by Plaintiff, when in fact they are not.

59. Defendants' use of the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress erodes the connection between the Trade Dress and Plaintiff. Plaintiff's reputation has thus been and will continue to be subject to the perils and hazards which arise from Defendants' infringing activities, resulting in grave harm to Plaintiff and the consuming public.

60. Plaintiff has no control over the acts of Defendants, nor any responsibility for the acts of Defendants.

61. Defendants' acts create and further the likelihood that the public will be confused as to sponsorship, source, affiliation or association of the products and services of Defendants.

62. Defendants' use of, and/or association with, Plaintiff's Zebra Watch Trade Dress and Multi-Color Watch Trade Dress constitutes a false designation of origin, as consumers are likely to associate Plaintiff's Trade Dress with Defendants.

63. Defendants' use of the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress constitutes false advertising to lead consumers to believe that Defendants' infringing watches originate from Plaintiff when in fact they do not.

64. Defendants' unauthorized use of the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress in advertising and promoting the infringing watches is misleading as to the nature, quality and origins of the goods sold by Defendants.

65. Defendants' adoption of the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress unfairly capitalizes on the goodwill associated with the Trade Dress that Plaintiff has built throughout the years.

66. By adopting the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress, Defendants are unfairly competing with Plaintiff by conducting business on the goodwill built by Plaintiff. At the same time, Defendants are diluting the distinctive value of the Trade Dress, which is a core asset of Plaintiff.

67. Defendants' false designation of origin, false advertising and unfair competition have caused Plaintiff to sustain monetary damage, loss and injury, in an amount to be determined at the time of trial.

COUNT III
TRADE DRESS INFRINGEMENT UNDER NEW YORK LAW

68. Plaintiff restates and re-avers each and every allegation contained in the foregoing paragraphs and the acts of Defendants asserted therein as if fully recited in this paragraph.

69. This count arises under New York State common law.

70. This claim is for trade dress infringement against Defendants for their advertising, distribution, sale, and offering for sale infringing watches bearing the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress in the State of New York, and elsewhere.

71. Without Plaintiff's authorization, and with full knowledge of Plaintiff's exclusive rights in the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress, Defendants have advertised, distributed, sold, and offered for sale infringing watches bearing the Trade Dress.

72. Plaintiff's Zebra Watch Trade Dress and Multi-Color Watch Trade Dress are non-functional because the elements of the Trade Dress are not essential to the use, purpose, cost or quality of the watches and Plaintiff's exclusive use of the Trade Dress would not put competitors at a significant non-reputation-related disadvantage.

73. Plaintiff's Zebra Watch Trade Dress and Multi-Color Watch Trade Dress have acquired secondary meaning with the public and the Trade Dress identifies Plaintiff as the source of the products in the marketplace.

74. Defendants' use of the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress on infringing watches is likely to cause confusion, mistake and deception among the general purchasing public as to the origin of the infringing watches, and is likely to deceive the public into believing the infringing watches being sold by Defendants originate from, are associated with or are authorized by Plaintiff.

75. Defendants' actions constitute infringement of the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress in violation of Plaintiff's rights under New York State common law.

76. Defendants' actions demonstrate an intentional and willful intent to trade on the goodwill associated with the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress.

77. Defendants' trade dress infringement has caused Plaintiff to sustain monetary damage, loss and injury, in an amount to be determined at the time of trial.

COUNT IV
UNFAIR COMPETITION UNDER NEW YORK LAW

78. Plaintiff restates and re-avers each and every allegation contained in the foregoing paragraphs and the acts of Defendants asserted therein as if fully recited in this paragraph.

79. This count arises under New York State common law.

80. Defendants have willfully and intentionally used the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress in a manner which is likely to cause confusion, mistake or deception, by virtue of its prominent use thereof in connection with Defendants' infringing watches.

81. Defendants' adoption of the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress unfairly capitalizes on the goodwill associated with the Trade Dress that Plaintiff has built throughout the years.

82. By adopting the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress, Defendants are unfairly competing with Plaintiff by conducting business on the goodwill built by Plaintiff. At the same time, Defendants are diluting the distinctive value of Plaintiff's Trade Dress.

83. Defendants adopted and reproduced Plaintiff's Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress in bad faith in order to unfairly compete with Plaintiff's goods in the marketplace.

84. Defendants' acts create and further the likelihood that the public will be confused as to sponsorship, source, affiliation or association of the products and services of Defendants.

85. Plaintiff has no control over the acts of Defendants, nor any responsibility for the acts of Defendants.

86. Defendants' unfair competition has caused Plaintiff to sustain monetary damage, loss and injury, in an amount to be determined at the time of trial.

PRAYER FOR RELIEF AND DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby demands a trial by a jury on all issues triable by right of jury.

WHEREFORE, Plaintiff prays:

1. That the Court award to Plaintiff compensatory, consequential, statutory, and punitive damages on all claims of relief, in an amount to be determined at trial.

2. That pursuant to 15 U.S.C. §1117 Defendants be directed to pay Plaintiff its profits realized in connection with importation, sale, offering for sale, distribution, exhibition, display or advertising of goods bearing the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress, any and all damages sustained by Plaintiff, and the costs of this action;

3. That pursuant to 15 U.S.C. §1117, Defendants be directed to provide Plaintiff an accounting of all profits that they have obtained by consequence of Federal and New York State Law Trade Dress Infringement and Unfair Competition, Federal False Advertising, and Federal False Designation of Origin as enumerated herein;

4. For an award of their reasonable attorney's fees pursuant to 15 U.S.C. §1117(a);

5. For a declaration that Defendants' acts and conduct infringe the Trade Dress;

6. For a declaration that Defendants' acts and conduct infringing the Trade Dress are willful;

7. That this Court require the Defendants to account to Plaintiff for all profits and expenses realized by Defendants attributable to the infringements of the Trade Dress as alleged;

8. That Defendants, its officers, agents, servants, employees and attorneys, and those in active concert or participation with it, be permanently enjoined and restrained:

a. from using in any manner the Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress, alone or in combination with any other words or designs, in manner likely to cause confusion, deception, or mistake on or in connection with advertising, offering for sale or sale of any goods not manufactured by Plaintiff, or not authorized by Plaintiff to be sold in connection with their respective said trade dress including, but not limited to Defendants' usage depicted in paragraphs 25 and 29 above.

b. from representing, suggesting in any fashion to any third party, or performing any act which may give rise to the belief that Defendants, or any of their goods, are authorized or sponsored by Plaintiff; and

c. from otherwise competing unfairly with Plaintiff in any manner.

9. Destruction of all infringing articles pursuant to 15 U.S.C. § 1118.

10. Any such other and further relief as this Court deems just and equitable.

Respectfully submitted
for Plaintiff,

By: ______________________

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